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10 LISA FARIA, SHARA MESIC BELTRANO and  
11 STACY PETTIGREW in their capacities  
12 as Alameda County Deputy District Attorneys

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 CORNELIUS LOPES,

NO. C-07-6213 PJH

16 Plaintiff,

17 vs.

18 FREMONT FREEWHEELERS, et al.,

19 Defendants.

REPLY MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANTS FARIA, BELTRANO AND  
PETTIGREW'S MOTION TO DISMISS  
COMPLAINT FOR FAILURE TO STATE A  
CLAIM UPON WHICH RELIEF CAN BE  
GRANTED [FRCP 12(b)(6)] OR, IN THE  
ALTERNATIVE, MOTION FOR MORE  
DEFINITE STATEMENT [FRCP 12(e)]

20 Date: June 25, 2008

21 Time: 9:00 a.m.

22 Dept.: Courtroom 3, 17<sup>th</sup> Floor

23 Judge: Phyllis J. Hamilton

24  
25 **I. INTRODUCTION**

26 Plaintiff Cornelius Lopes' (hereinafter "Plaintiff") has filed a 27-page document in response to  
27 the instant motion (hereinafter "Opposition") which is incomprehensible. This Opposition consists of a  
28 title page and six pages of text interspersed with 20 pages of photos and other documents that appear to

1 be exhibits related to the June 2004 incident at issue in Plaintiff's Complaint. However, none of the  
 2 pages of Plaintiff's Opposition provides any intelligible response to Defendants' Motion to Dismiss, nor  
 3 do they provide any authority for Plaintiff's allegations against Defendants LISA FARIA, SHARA  
 4 MESIC BELTRANO or STACY PETTIGREW.

5 In sum, Plaintiff fails to provide any support for his request that "the Alameda County D.A.'s  
 6 claims should not be dismissed [*sic*]." (Opposition, 23:1-2). Further, he fails to address any of the issues  
 7 raised in the Motion to Dismiss. Thus, Defendants respectfully request that the Motion to Dismiss be  
 8 granted in its entirety, without leave to amend and that Defendants FARIA, MESIC BELTRANO and  
 9 PETTIGREW be dismissed from the case.

## 10 II. LEGAL ARGUMENT

11 A Motion to Dismiss under FRCP 12 (b)(6) is appropriate when Plaintiff fails to state a claim  
 12 upon which relief can be granted. Here, Plaintiff has failed to state a claim against any of the  
 13 Defendants which is comprehensible, or upon which relief can be granted. Further, as noted in the  
 14 Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss, Plaintiff's  
 15 Complaint is difficult to decipher, but Defendants *guess* that Plaintiff is alleging claims against  
 16 Defendants which are barred by *res judicata*, prosecutorial immunity, the statute of limitations, and  
 17 Plaintiff's failure to exhaust required administrative remedies.

### 18 A. Plaintiff Fails to Provide Any Support for His Opposition to Defendants' Motion to Dismiss

19 In the document entitled "Plaintiff's Opposition to Dismiss Claims," Plaintiff does not provide  
 20 any support, nor even any mention, as to why his claims against Defendants FARIA, MESIC  
 21 BELTRANO and PETTIGREW should not be dismissed. In fact, Plaintiff's Opposition does not  
 22 mention Alameda County Deputy District Attorney Defendants FARIA, MESIC BELTRANO or  
 23 PETTIGREW in any way, and Plaintiff only mentions "the Alameda County D.A." once, as follows:  
 24 "The Alameda County D.A.'s claims should not be dismissed because of the lasting lynching effects  
 25 upon the plaintiff." (Opposition, 23:1-2). Such an assertion does not provide any guidance to  
 26 Defendants as to what he is asserting against them, nor does it provide any authority for not dismissing  
 27 his Complaint against them.

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**III. CONCLUSION**

For the foregoing reasons, it is respectfully requested that this Court grant Defendants' Motion to Dismiss in its entirety, without leave to amend, and dismiss Defendants from this case.

Dated: June 25, 2008

PATTON ♦ WOLAN ♦ CARLISE LLP

by: \_\_\_\_\_/s/\_\_\_\_\_

STEVEN C. WOLAN

ANDREA S. CARLISE

MAUREEN M. DUFFY

Attorneys for Defendants

LISA FARIA, SHARA MESIC BELTRANO and

STACY PETTIGREW in their capacities

as Alameda County Deputy District Attorneys

PROOF OF SERVICE

I, Leah J. Duckworth, declare:

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within-entitled action. I am employed by the law firm of PATTON ♦ WOLAN ♦ CARLISE LLP, whose business address is 1999 Harrison Street, Suite 1350, Oakland, California 94612.

On June 25, 2008, I caused to be served:

- REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS FARIA, BELTRANO AND PETTIGREW'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED [FRCP 12(b)(6)] OR, IN THE ALTERNATIVE, MOTION FOR MORE DEFINITE STATEMENT [FRCP 12(e)]

X (by mail) on all parties in said action, in accordance with Code of Civil Procedure Section 1013, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At PATTON ♦ WOLAN ♦ CARLISE LLP, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Oakland, California.

Cornelius Lopes  
6251 Quartz Place  
Newark, CA 94560

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on June 25, 2008, at Oakland, California.

\_\_\_\_\_/s/\_\_\_\_\_  
Leah J. Duckworth